S.B. CIVIL MISC. APPEAL NO.434/2005

Swaroop Singh vs. Bank of Raj. Ltd. and others.

Date : 20.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Lalit Kawadia, for the appellant.

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Heard learned counsel for the appellant.

The appellant's application for setting aside of the ex-parte decree passed in favour of respondent bank was rejected by the trial court vide order dated 2.3.2005.

Learned counsel for the appellant submits that the court below proceeded on wrong assumption of law and considered all irrelevant facts while deciding the application of the appellant. It is submitted that the court below was prejudiced because of the fact that the appellant did not appear before the trial court on earlier occasion also and did not submit the written statement before the court below. It is also submitted by the learned counsel for the appellant that the court below should have looked into whether there was sufficient cause for non-appearance when the court below passed the ex-parte decree or passed an order to proceed ex-parte and the court below should have looked into the fact that whether there was sufficient

reason for non-appearance of the appellant when his case was decreed ex-parte.

I have considered the submissions of the learned counsel for the appellant.

It is clear that the appeal cannot be entertained to favour a person whose conduct is not above board. In this case, it appears that the Bank filed a suit for recovery and the appellant was the guarantor for the loan amount. He did not appear before the court below despite service and the court below passed the ex-parte order and that ex-parte order was set aside and despite all above, the appellant did not file the written statement and even the court ordered the closure of the appellant's right to file the written statement and thereafter passed the ex-parte order again.

In view of the above, looking to the conduct of the appellant, there appears to be no reason to interfere in the order of the court below which is well within its jurisdiction and after appreciating the evidence.

Accordingly, this misc. appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya